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1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2           **GRACE CHRISTINE KRAMER,**

3           Petitioner-Appellant,

4           **v.**

**No. 35,200**

5           **ALLSTATE INSURANCE COMPANY,**

6           Respondent-Appellee.

7           **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

8           **Alan Malott, District Judge**

9           Mescall Law Firm, P.C.

10          Thomas J. Mescall, II

11          Phillip Patrick Baca

12          Albuquerque, NM

13          for Petitioner-Appellant

14          Stiff, Keith & Garcia, LLC

15          Ann L. Keith

16          Edward F. Snow

17          Albuquerque, NM

18          for Respondent-Appellee

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**MEMORANDUM OPINION**

1 **BUSTAMANTE, Judge.**

2 {1} Petitioner, Grace Christine Kramer, appeals from the district court's order  
3 confirming the arbitration panel's award and denying her motions for attorney fees  
4 and prejudgment interest. This Court issued a calendar notice proposing to summarily  
5 reverse and remand to the district court for further proceedings. Respondent, Allstate  
6 Insurance Co., filed a memorandum in opposition to this Court's notice of proposed  
7 disposition, and Petitioner filed a memorandum in support of our proposed disposition  
8 and a motion for attorney fees and costs on appeal, each of which we have duly  
9 considered. Unpersuaded that our proposed disposition was incorrect, we reverse and  
10 remand. Petitioner's motion for attorney fees and costs on appeal is denied.

11 {2} In April 2013, Petitioner made an uninsured motorist claim against Respondent  
12 for bodily injuries resulting from a hit and run collision. [CN 2] Following an  
13 arbitration hearing, the arbitration panel awarded Petitioner \$83,000. [CN 2] The  
14 panel's award also included language that "[t]he parties shall submit to the arbitration  
15 panel any additional matters that remain unresolved." [CN 2] Apparently in response  
16 to the panel's invitation for submission of additional matters, Petitioner requested that  
17 the panel award attorney fees, pursuant to NMSA 1978, Section 44-7A-22(b) (2001)  
18 and NMSA 1978, Section 39-2-1 (1977), and prejudgment interest, pursuant to NMSA  
19 1978, Section 56-8-4 (2004). [CN 2] The panel denied both of these requests. [CN 2]

1 As we observed in our notice of proposed disposition, it appears that the denials were  
2 based on different grounds. [CN 5] Specifically, the denial of attorney fees was based  
3 on the arbitration panel’s perception that it did not have the authority to even consider  
4 the issue, while the denial of prejudgment interest appears to have been grounded on  
5 the panel’s determination that the issue was not submitted to it. [CN 5]

6 {3} Petitioner subsequently filed a petition in the district court seeking to confirm  
7 the award of \$83,000, plus the costs awarded in the decision, and also moved for  
8 attorney fees and prejudgment interest. [CN 3] The district court confirmed the  
9 arbitration award and costs, but denied Petitioner’s request for attorney fees and  
10 prejudgment interest. [CN 3] We noted in our calendar notice that it appeared from the  
11 district court’s limited review—for whether the statutory grounds for vacating the  
12 award were met, pursuant to NMSA 1978, Section 44-7A-24 (2001)—that the district  
13 court considered the issues of attorney fees and prejudgment interest to have been  
14 ruled on and denied by the arbitration panel. [CN 4]

15 {4} The district court ultimately determined that the statutory grounds for vacating  
16 the award were not met. [CN 4] *See* § 44-7A-24 (stating that the court shall vacate an  
17 award made in the arbitration proceeding if, among other reasons, “the award was  
18 procured by corruption, fraud or other undue means[,]” or if there was evident  
19 partiality, corruption, or misconduct by an arbitrator). Nevertheless, because we

1 proposed to determine in our calendar notice that the panel’s decision denying  
2 attorney fees and prejudgment interest was an award on matters not submitted to the  
3 panel [CN 6-7], we proposed to conclude that the district court erred in denying  
4 Petitioner’s motions—on the basis that the grounds for vacating the award were not  
5 met—without also determining whether the grounds for modification or  
6 correction—specifically, NMSA 1978, Section 44-7A-25(a)(2) (2001)—were met  
7 [CN 7]. *See id.* (stating that the court shall modify or correct the award if the arbitrator  
8 has made an award on a claim not submitted to the arbitrator and the award may be  
9 corrected without affecting the merits of the decision upon the claims submitted).

10 {5} In its memorandum in opposition, Respondent takes issue with our proposed  
11 conclusion that the panel’s decision denying attorney fees and prejudgment interest  
12 was an award on matters not submitted to the panel. [MIO 10] Specifically,  
13 Respondent argues that the panel did not make an award on attorney fees and  
14 prejudgment interest, but rather that the panel “*declined* to include an award on claims  
15 not submitted to them.” [MIO 10 (emphasis in original)] We are not convinced,  
16 however, that this characterization is correct in light of the clear statements of  
17 denial—not declination—contained within the panel’s decision. [*See* CN 4-5] To the  
18 extent that Respondent may be arguing that the panel’s denial itself does not constitute  
19 an award, we note that Respondent has not provided us with any authority to support

1 such a proposition. Where a party cites no authority to support an argument, we may  
2 assume no such authority exists. *In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100  
3 N.M. 764, 676 P.2d 1329. Thus, we are not convinced that our proposed disposition  
4 is incorrect. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d  
5 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden is  
6 on the party opposing the proposed disposition to clearly point out errors in fact or  
7 law.”).

8 {6} With respect to Petitioner’s motion for attorney fees and costs on appeal, the  
9 motion is denied at this time, insofar as the reasonableness of Respondent’s failure to  
10 pay the claim has not been determined by the district court in the first instance, nor is  
11 that issue before this Court on appeal. *See* § 39-2-1 (stating that an insured person  
12 “may be awarded reasonable attorney’s fees and costs of the action upon a finding by  
13 the court that the insurer acted unreasonably in failing to pay the claim); *see also*  
14 *Alber v. Nolle*, 1982-NMCA-085, ¶ 50, 98 N.M. 100, 645 P.2d 456 (stating that an  
15 award of attorney fees on appeal requires statutory authority).

16 {7} Accordingly, for the reasons stated in this Opinion, as well as those provided  
17 in our calendar notice, we reverse and remand to the district court for a determination  
18 on the merits whether Petitioner is entitled to attorney fees or prejudgment interest.  
19 *Cf. United Tech. & Res., Inc. v. Dar Al Islam*, 1993-NMSC-005, ¶ 18, 115 N.M. 1,

1 846 P.2d 307 (recognizing that because the arbitrators' award contained a ruling on  
2 the issue of attorney fees, the district court could not properly grant the fees on its own  
3 accord, and that before the court could consider the question whether the party should  
4 recover its attorney fees in the arbitration, a timely motion to correct the arbitration  
5 award should have been made).

6 {8} **IT IS SO ORDERED.**

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**MICHAEL D. BUSTAMANTE, Judge**

10 **WE CONCUR:**

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**LINDA M. VANZI, Judge**

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**J. MILES HANISEE, Judge**